



The Commonwealth of Massachusetts

William Francis Galvin, Secretary of the Commonwealth
Public Records Division

Shawn A. Williams
Supervisor of Records

April 24, 2013

SPR13/059

Mr. Adam Buckley, Esq.
City Solicitor
Municipal Building
24 Lowell Street
Peabody, MA 01960

Dear Attorney Buckley:

I have received the petition of Mr. Shawn Musgrave appealing the response of the Peabody Police Department (Department) to his request for public records. G. L. c. 66 § 10(b); see also 950 C.M.R. 32.08(2). Specifically, he requested copies of records regarding the Automated License Plate Recognition system. In its November 27, 2012 letter, the Department indicated its intent to withhold the records pursuant to Exemption (b) of the Public Records Law.

Under the Public Records Law and the Access Regulations (Regulations) all requests for public records must be met with a response within ten (10) days of the request. G. L. c. 66, § 10(b); 950 C.M.R. 32.05. The response may be an offer to provide records, a fee estimate for provision of the records, or a denial. The Public Records Law states that "the burden shall be upon the custodian to prove *with specificity* the exemption which applies." G. L. c. 66, § 10(c) (*emphasis added*). See also *Globe Newspaper Co. v. Police Comm'r*, 419 Mass. 852, 857 (1995); see also *District Attorney for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995).

In order to withhold a record, the record custodian is charged with the duty of *proving with specificity* how a particular exemption applies to each individual record. A denial must include a citation to one of the statutory exemptions upon which the records custodian relies, and must explain why the exemption applies. G. L. c. 66, § 10(c); *Dist. Att'y for the Norfolk Dist. v. Flatley*, 419 Mass. 507, 511 (1995) (custodian must offer specific proof that the records sought are of a type to which an exemption applies).

The response by the Department did not contain the specificity required in a denial of access to public records. The Department has yet to meet its burden in proving with specificity why the records have not been made available to Mr. Musgrave.

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Accordingly, the Department is hereby ordered, within ten (10) days of this order, to provide Mr. Musgrave with the requested records, or provide to this office, *with specificity*, how a particular exemption applies to each record. Failure to comply with this administrative order may result in the filing of a complaint for enforcement in the Superior Court by Mr. Musgrave.

This administrative appeal is now closed.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Williams', written over the words 'Very truly yours,'.

Shawn A. Williams
Supervisor of Records

cc: Mr. Shawn Musgrave